

**DECEMBER 21, 2004  
UNAPPROVED MINUTES**

UNAPPROVED MINUTES  
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (including Joint Meeting with Milpitas Redevelopment Agency)
Date of Meeting:	December 21, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Public Business)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

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**CALL TO ORDER/ROLL**

Mayor Esteves called to order regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Gomez, and Councilmembers Giordano and Livengood. Councilmember Polanski was absent.

**CLOSED SESSION**

Mayor Esteves reported the Council would convene in Closed Session to discuss the following item listed on the agenda:

Public Employee Performance Evaluation/Appointment/Dismissal/Release  
(Pursuant to Government Code Section 54957)  
Title: City Manager

**CLOSED SESSION  
ANNOUNCEMENTS**

City Attorney Steve Mattas announced that by a 3 to 1 vote, with Mayor Esteves voting no, the Council accepted the resignation of City Manager Thomas Wilson, agreed to honor the contract provisions with Mr. Wilson's contract, and by a 3 to 1 vote, with Mayor Esteves voting no, appointed Police Chief Lawson as the interim City Manager effective December 22, 2004.

**PLEDGE**

Mayor Esteves led the Council and audience in the Pledge of Allegiance.

**MINUTES**

MOTION to approve the minutes of the Special City Council meeting on December 7, 2004, and the regular City Council minutes of December 7, 2004, including joint meeting with the Redevelopment Agency, as presented.

M/S: Gomez, Livengood.

Ayes: 4

Absent: 1 (Polanski)

**SCHEDULE**

MOTION to approve the schedule of meetings as presented.

M/S: Gomez, Livengood.

Ayes: 4

Absent: 1 (Polanski)

**PRESENTATIONS**

Mayor Esteves presented a Commendation to Paul T. Gish for his achieving the rank of Eagle Scout. Paul talked about scouting and thanked the Mayor for supporting the scouting program. Mayor Esteves commented that the success of an Eagle Scout was accompanied by the support of the parents and asked Paul's parents to stand and be recognized.

**CITIZENS FORUM**

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks be limited to two minutes or less and noted that the Clerk would be using the timer to indicate when two minutes were up.

Rob Means, Milpitas, spoke about the resignation of City Manager Wilson commenting that part of the Code of Ethics for the City included the accountability value that talked about explaining the actions and decisions of Councilmembers. Mr. Means asked what was so bad about Tom Wilson that he had to be terminated early; he knew police and fire had some complaints about him but they were never specific; and inquired how much it will cost the City.

**ANNOUNCEMENTS**

Mayor Esteves commented that sharing information on activities Councilmembers had attended or participated with was part of open government.

City Attorney Mattas cautioned the Council that issues related to Mr. Wilson were personnel matters and advised the Council not to engage in further discussion about them.

Mayor Esteves congratulated Wells Fargo Bank on the opening of a branch at McCarthy Ranch and thanked them for coming to Milpitas; congratulated the Vietnamese Radio Station on its 10<sup>th</sup> anniversary; said he attended the U.S. Army Volunteer Reserve Program ceremony, attended part of the opening of the Kung Fu School in Milpitas, and attended a Service Club dinner sponsored by the Kiwanis Club where he had the pleasure of joining members of the different service groups in Milpitas. Mayor Esteves reminded the Council that he had distributed the list of commissions and had requested Councilmembers inform him of their preferred assignments so that he could honor them.

**CONFLICTS OF INTERESTS** City Attorney Steve Mattas asked the members of the Council to identify any potential conflicts of interest with any of the items on the agenda. Mr. Mattas said that item 5 on the agenda (a request from the Mayor) involved two separate entities and in prior discussions he had with Councilmember Giordano, he suggested she may wish to abstain and before the matter came back to the Council, she would be advised as to whether or not she would have to abstain on the actual action item. Mr. Mattas advised that the Food Pantry item could be taken as one issue and the Chamber as another issue. Mayor Esteves agreed to split the item into two issues. City Attorney Mattas inquired if there were any other potential conflicts. There were none disclosed.

**MOMENTS OF REFLECTION** There were none.

**AGENDA** MOTION to approve the agenda as submitted.

M/S: Livengood, Giordano. Ayes: 4 Absent: 1 (Polanski)

**CONSENT CALENDAR** Mayor Esteves inquired if anyone wished to remove any items from the Consent Calendar.

Councilmember Livengood stated in light of being so close to the holidays, there were a couple of items he needed more time to look at and requested item 9 (Ethics Awareness Survey) and item 10 (Lobbying Ordinance) be added to the Consent Calendar with the recommendation to continue them to the second meeting in January (January 18, 2005).

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the addition of items 9 and 10 (with the recommendation to continue both items to January 18, 2005), in accordance with the staff recommendations.

M/S: Livengood, Gomez. Ayes: 4 Absent: 1 (Polanski)

\*7.  
Community Advisory  
Commission Work Plan

Approved the Community Advisory Commission's proposed 2005 work plan.

\*9.  
Ethics Awareness Survey

Continued to the second meeting in January 2005 (January 18, 2005).

\*10.  
Lobbying Ordinance  
No. 267

Continued to the second meeting in January 2005 (January 18, 2005).

\*11.  
Barber Bellew Traffic Signal  
(Project No. 4212)

Adopted Resolution No. 7494 granting initial acceptance of the public improvements consisting of a traffic signal installation at Barber Lane, Barber Court and Bellew Drive with diagonal parking and signal coordination (Project No. 4212), subject to a one-year warranty period and reduction of the faithful performance bond to \$21,488.70.

\*12.  
Off Leash Dog Park

Adopted Resolution No. 7495 granting final acceptance and release of the Contractors bond for the improvements, which included installation of sod, hydroseed, benches, trash

- (Project No. 5072) receptacles, drinking fountain, kiosk, arbor and landscape/irrigation at the Off-Leash Dog Park at Ed Levin County Park (Project No. 5072).
- \*13.  
Diversified Fire Products  
(Project No. 8026)** Approved the Contract Change Order for Diversified Fire Products to enhance emergency communication capability between the City Hall Building and Dispatch in the amount of \$8,415.60.
- \*14.  
Sewer Modeling** Approved a purchase order to Raines, Melton & Carella for additional sewer hydraulic modeling to include the impact of extra wet weather flows on capacity for an amount not to exceed \$23,240.
- \*15.  
Coyote Creek Trail, Reach 1  
(Project No. 4206)** 1. Approved plans and specifications for Coyote Creek Trail, Reach 1 (Project No. 4206).  
2. Authorized advertising for bid proposals.
- \*16.  
Underground Storage Tank** Awarded the monthly underground storage tank inspection and reporting services to Monette Consulting Services in the amount of \$3,324.00 and approve the transfer.
- \*17.  
Mechanical Sun Screen  
(Project No. 8026)** Awarded contract for installation of mechanical sunscreen at the City Hall Building to California Textiles Inc. in the amount of \$12,510.00.
- \*18.  
Building Improvements Project  
(Project No. 8135)** Awarded the installation of sound insulation baffles and wall insulation for the community room located at the Police Department (Building Improvements Project No. 8135) to Ireland Interiors in an amount not to exceed \$9,800.00.
- \*19.  
Silicon Valley Intelligent  
Transportation System (ITS)  
(Project No. 4219)** Authorized the City Manager to execute the agreement amendment with 4 LEAF Inc. for additional services needed to complete the construction closeout phase of the Silicon Valley Intelligent Transportation System (ITS) (Project No. 4219), and prepare documentation for potential claims, in the amount of \$20,000, subject to approval as to form by the City Attorney.
- \*20.  
Main Sewage Pump Station  
Demolition (Project No. 6079)** Authorized staff to approve the contract change order for Main Sewage Pump Station Demolition (Project No. 6079) in the amount not to exceed \$113,496.77 to ICONCO Inc. to demolish the digester structure, including the removal, testing, and disposal of water and sludge remaining in the structure
- \*21.  
Election Costs** Approved a budget appropriation in the amount of \$10,000 from the contingency reserve and authorized payment to Santa Clara County in the amount of \$67,128 for the services of the Registrar of Voters for the November 2, 2004, General Municipal election.
- \*22.  
Workers' Compensation** Approved the year-end final premium for Workers' Compensation Excess Insurance with Ace American Insurance for fiscal year 2003-04 in the amount of \$7,848.90 through Brown and Brown Insurance brokers.

## **PUBLIC HEARINGS**

- 1.  
Major Tentative Map  
Apton Plaza Project** Acting Planning & Neighborhood Services Director Tambri Heyden reported that on April 14, 2002, the Planning Commission reviewed the site and architectural application and Use Permit for this project; at that time, it was comprised of a five-story mixed use building, 102 residential units, and 6,000 sq. ft. of retail; it came back to the Planning Commission about a year later and to the City Council in September 2004 with modifications to reduce the number of units, the retail floor area, the number of stores, the building height, and the number of parking spaces as well as some minor exterior changes. Ms. Heyden further reported the applicant was now requesting a major tentative tract map to create 96 residential condominiums and one commercial condominium to be sold individually rather than rented. Ms. Heyden said the Planning Commission approved the requested change on December 8, 2004, and recommended approval subject to the conditions included in the Council's agenda packet.

Councilmember Livengood asked for confirmation that the changes were limited to just the items outlined, the units previously envisioned to be rental would now be for sale, and the builder did not perceive or see the need to change any of the floor plans to convert them from rental to for sale. Ms. Heyden responded the builder did not. Councilmember Livengood asked for clarification that the builder would not be coming back to the Council later for changes. Ms. Heyden responded not at this point, and the builder was ready to submit the building permit.

Mayor Esteves opened the public hearing and invited comments.

Rob Means, Milpitas said from the start, this project looked really good, and changing the project from rental to condominiums seemed to make sense. Mr. Means further stated he thought a PRT connection between the north end of Milpitas and the LRT station would benefit not only this project but the Library project and the KB project as well.

Kathryn Manento, Milpitas, inquired if the project was still for seniors and would it also still be available to assist the seniors in grant writing to be able to purchase the property. Ms. Heyden clarified that this was not a senior housing project.

MOTION to close the public hearing.

M/S: Giordano, Livengood. Ayes: 4 Absent: 1 (Polanski)

MOTION to approve the Tentative Tract Map No. MA2004-04.

M/S: Giordano, Livengood. Ayes: 4 Absent: 1 (Polanski)

2.  
**Ordinance No. 124.37**  
**(Zoning/Sign Code)**

Acting Planning & Neighborhood Services Director Tambri Heyden recognized the individuals who had worked on the project by serving on the Code Enforcement Task Force and the Sign Code Task Force who were present in the audience and recognized staff members who also worked on the ordinance. Ms. Heyden spoke on the increasing importance of beautification in the City, which had been a primary component of several of the City's projects and efforts. Ms. Heyden explained the efforts were important to help compete with other businesses and cities in terms of Economic Development and Smart Growth; were consistent with the Economic Development Commission's new City image goal; were important to attract R&D businesses and workers and to create a desirable environment for those workers to live in; to continue to improve the overall appearance of the City; and to achieve fast and comprehensive Code violation compliance; to ensure compliance that's fair and uniform among the City's businesses and residents; and to have the authority to ensure compliance.

Ms. Heyden outlined the expectations when the Neighborhood Beautification Ordinance was adopted as being a major step for the City in terms of beautification, and there were certain expectations that were established at that time; the objective was to address unsightliness both on private and public property; to establish a minimum continuous level of upkeep, and to phase the program, which meant delaying the citations until a later date when the public awareness could be completed; it was known that there would have to be an on-going evaluation of the program, which had been done on several occasions, one of which led to some Code amendments. Ms. Heyden said Phase 1 included education and outreach; was a complaint-driven enforcement process; several minor Code amendments were adopted after the first year of the program, one of which reduced the notification time frame from long parking from 30 days to 15 days; Phase 2 was rolled out in Spring 2003 with the Council's adoption of Administrative Citation Fees and additional outreach and education was done; and in the Spring 2003, a Zoning Code amendment was adopted to take the success of the Administration Citation process from the NBO and apply it to the Zoning Code. Ms. Heyden reported that between October 2003 and October 2004, staff closed 538 of 565 customer service requests and to do that, 101 of those violations were corrected through the citation process; and of those, only six have not been abated to date.

Ms. Heyden commented on remaining challenges, showing photos of the violation challenges of temporary signs; actions taken to date; and proposed solutions to transition from complaint-driven to pro-active enforcement in both residential and business. Ms. Heyden stated with this proposal, with respect to temporary signs, staff had established a no-fee registration form that included the date the applicant wanted the sign to go up and the date the sign would come down, which would be monitored by staff; the outreach and education portion of the program would include a utility bill insert, an article in the Spring City Newsletter, direct mail flyers to all City businesses, information on the City's Web site and Channel 15, press release, and a 90-day delay was being proposed until the implementation of the education outreach was completed.

Regarding the specific amendments, Ms. Heyden reported there was strong Task Force support for the reduction for the NBO violations from 30 days to 15 days; increase the number of days for zoning violations from 15 days to 30 days, and to establish 30 days for Sign Code violations. There would be the ability to levy fines without notice for certain violations that posed Health and Safety dangers and for recurring intermittent violations. Proposed that the NBO abatement procedure, which was currently established under the Zoning Ordinance and the NBO be added to the Sign Code; the Task Force felt it important to have another avenue of relief for violations currently under the Hearing Process; and the decisions could be appealed to the City Council.

Ms. Heyden reported the Task Force felt it was important that the Sign Code and Zoning Code be given out at the front counter; and felt it was important not to reference those sections in the NBO, but to copy the text so it was readily available and easy to find in both the Sign Code and the Zoning Ordinance.

Senior Planner Dennis Carrington gave an overview of the three categories of the Sign Ordinance with the objectives being ordinance clarity, economic development and flexibility, and enhanced aesthetics. Mr. Carrington said that in looking at the Sign Ordinance, it was found that many terms were not defined, and the amendment reorganized the sign Ordinance to provide definitions for several terms or sign types, proposed that signs designating churches be changed to "church and religious assembly", moved several isolated regulations into separate sections, provided a more effective sign program procedure for commercial and industrial sites, created construction signs, joint use signs, portable sign and temporary promotional sign categories, enhanced the sign program process, provided administrative citation authority and addressed the violations sections of the Sign Ordinance and the Neighborhood Beautification Ordinance.

Ms. Heyden reported the project was exempt from the provisions of the California Environmental Quality Act (CEQA) because there was no possibility that the ordinance text amendments may have a significant effect on the environment; the proposed text amendments will reorganize and clarify the Sign Ordinance, address violations in the Sign Ordinance and NBO and provide for Administrative Citation authority in the Zoning Ordinance. Ms. Heyden reviewed the recommendation to introduce Ordinance No. 124.27, approve transition from complaint-driven to pro-active enforcement, and authorize proceeding with updating the political sign section of the Sign Code.

Councilmember Giordano inquired how the picture shown of a vehicle and some debris in front of a house related to the proposed ordinance. Ms. Heyden clarified that all three ordinances were being looked at and staff was proposing changes to all three; the Sign Code had more changes than the other two proposed ordinances; the only changes to the NBO and the Zoning Code had to do with the number of days to comply, the ability to differentiate between continuous violations and non-continuous violations, and to be able to levy fines with no notice for Health and Safety issues. Councilmember Giordano inquired if that would also include the enforcement process for the NBO. Ms. Heyden stated it would.

Mayor Esteves commented that the economic development portion of the Sign Ordinance amendment would allow off-site signs (especially businesses that have some relationship in one location) and recalled a group of businesses that wanted an off-site sign at Dixon/I-800. Ms. Heyden responded those property owners had been represented on the Task Force, issues

were that the City's Sign Code did not allow signage on an Interstate unless the businesses' driveway was off the Interstate; this Sign proposal would allow the joint use signs; instead of applying for a variance, the Sign Program would allow one to submit their proposal and on the merits of that proposal, and the design aspects of it, it could be approved without having the burden of proof that was normally placed on the applicant for a variance.

Mayor Esteves, addressing temporary sign registration, inquired what the expected volume would be. Ms. Heyden responded under the current Ordinance, 14-days was the limit, and the proposal was to extend it to 30 days explaining that the difficult part was not knowing when the sign went up. Mayor Esteves suggested that temporary signs indicate in small letters (on the sign) the start time. Housing & Neighborhood Preservation Specialist Gloria Anaya reported that from January 1 to October 31, 2004, staff dealt with 70 temporary signs from complaints.

Councilmember Giordano, addressing the Task Force and looking at the Economic Development Commission minutes of November 8 that stated in the report that was issued there had been no positions supported by the majority of the Task Force members, inquired if since that time a vote had been taken by the Task Force, what the composite of that Task Force was, were all members present, and what was the validity of the vote taken. Ms. Heyden responded the vote was taken at the last Task Force meeting (the first week in December), not all the Task Force members were there, it was not a unanimous decision, it was the majority of the members present that supported the amendments including adding administrative citations to the Sign Code, and a separate vote and action was taken on the transition from complaint driven to pro-active, which the majority of the members present supported.

Vice Mayor Gomez, addressing the 300 case backlog, inquired if staff had a breakdown of those cases. Ms. Anaya responded approximately 10% were Health and Safety related and she would not refer to the cases as backlog, but as the existing caseload. Vice Mayor Gomez inquired as to what was the standard response time for the different cases. Ms. Anaya stated staff's standard response time for Health and Safety issues was one to three days; otherwise the standard response time was approximately 5 days. Vice Mayor Gomez inquired if it was strictly staffing that was stopping increasing or improving the response time. Ms. Anaya responded yes. Ms. Heyden stated there was one exception, and that was not having Administrative Authority on the Sign Code; therefore, Sign Code violations in the caseload that Ms. Anaya was referring to, there were cases that had been pending in part of the caseload for 2-1/2 years; notice after notice was sent, but the violators know that staff does not have any teeth in the Sign Code, so there are open cases. Vice Mayor Gomez said he knew signs might be an issue, but they were more an annoyance than anything else; he had not received one call in the last two years regarding signs; and was concerned about moving towards a more pro-active approach about the items people were complaining about (weeds and abandoned vehicles).

Councilmember Livengood said he wanted to make sure that everybody was clear when abandoned vehicles were mentioned as it could have a number of different connotations; what was being talked about tonight was vehicles on private property; if the abandoned vehicle was on public property, it was a pretty quick response through the Police Department to go out and tag the vehicle, and per the California Vehicle Code, wait three days and tow it; so, what was being talked about tonight was somebody who parks their vehicle on jacks or something in the middle of their driveway or on their front lawn. Councilmember Livengood inquired if that also extended to vehicles that were on private property in a driveway with a flat tire. Ms. Anaya confirmed that was so.

Mayor Esteves opened the public hearing and invited comments.

Kathryn Manento, Milpitas, addressing staff's reference to churches and religions, requested a clearer explanation. Mr. Carrington stated the current language for signage that related to churches in the Ordinance states "Church Sign"; what many cities were doing now was to move to a more inclusive language, church or religious assembly, because there were many

others. Ms. Manento inquired if that meant leaving out the church name. Mr. Carrington responded at the present time, the name of the church wasn't included.

Richard Ruth, Milpitas, gave an example of some pro-active Code Enforcement that he experienced on December 6, 2004, when a police officer came to his door and said one of his neighbors had complained that his car was infringing on the sidewalk and he would have to move his car or be cited. Mr. Ruth felt that kind of action of a police officer in Milpitas did not engender any sort of confidence that a program like the one being proposed wouldn't degenerate down into some sort of an activity similar to the one he experienced; hoped everyone on the Council was aware of how these things generally happen; might want to clarify if the enforcement was 7 day/24-hour a day enforcement; felt there were a few problems waiting to develop with any sort of a comprehensive Code Enforcement program for Neighborhood Beautification or for any of the other actions in the two ordinances being discussed.

Greg Haas, a member of the Task Force, said he thought one of the more divisive issues of the presentation was the enforcement mechanism; having served on the Task Force, felt the people worked together and brought a very good proposal to the Council; supported the proposal; the proposal carried a lot of weight and gravity; in an environment where business in the community was being encouraged and at the same time when sweeping proposals were being made to the Sign Code ordinance, thought it was inappropriate to be aggressive in the enforcement posture; and thought a good approach would be to bifurcate the issue, to pass the Sign Code ordinance, and to set aside the enforcement issue for six to twelve months and revisit it after we see how the Sign Code takes affect and after there is public education for the business community so no one is offended.

Paul Stewart, Santa Clara County Association of Realtors, thanked staff and Ms. Heyden in particular for reaching out to the various segments of the community to put together the Task Force; understood that much progress was made on the proposal; many ideas were exchanged; a few disagreements; some resolutions; but, given that, it was felt that more work was needed on the proposal; was particularly concerned with the shift from a complaint driven to a pro-active enforcement; understood there were 101 complaints filed for businesses through October, yet only 6 had not been mediated or abated; questioned why fix it if it's not broken; secondarily, by being pro-active (assuming it could be handled by staff), questioned how it would handle getting rid of the backlog that already existed; lastly, felt there was support for additional education outreach; noted only nine people attended the public meeting that was held; the Sign Ordinance as proposed was something that had much involvement, particularly as it affected realtors because they were the last major industry in the United States that really depended on signage to bring the consumer to the product; would like to (and would be more than happy to help the City and staff) coordinate through the Santa Clara County Association of Realtors, meetings with the Chamber of Commerce or commercial development and commercial development and home building representatives; and didn't want to see the City take a step back by having something that will impact the ability for someone to come into the City.

Heidi Wolfe-Reid, member of the Task Force, said following-up on the previous comments, as far as the changes to the Sign Ordinance regulations, felt it was very positive progress that had been made there; and, as was pointed out, the real issue was the enforcement; felt it was a massive part of what the change was; it had not been looked at very much in depth, had not been discussed, and had not been publicized very well because the meetings as well as the public outreach happened over the holiday periods; as a member of the Task Force, she found a lot of the materials to be very confusing, but, one of the things she had looked at was individual violations (non-continuous violations -- i.e., open house signs); and she felt it should be further reviewed with more staff discussions.

Nick Ammann, Santa Clara County Association of Realtors, thanked staff and Ms. Heyden for the job they did in organizing the group; there were serious problems with the Ordinance; felt it needed clarity; felt this was the wrong time to be doing this sort of initiative given the business climate in Milpitas; felt it could be put off for a few months to be looked at and reviewed and come back and see how it could affect the business climate in Milpitas; felt the



pro-active approach was really going to put a different kind of edge to this and was not sure how it would affect the backlog of cases.

Beverly Bryant, Executive Director of the Home Builders Association of Northern California/Southern Division, supported the testimony the Council had heard about the Sign part of the ordinance; described signs as a city's window to the world, a message sent from a city to the rest of the people who come through it; and thought the Ordinance was not in a final state yet and needed some certainty, clarity, involvement with the people (i.e., the business people who were going to be the subjects of the mandates of the ordinance) was tremendously important; thought that taking some or all of the Ordinance back to Committee and making sure it's the way it really wants to be and everyone was comfortable with it was important; in terms of enforcement, it seemed that the current enforcement was very effective; to get enforcement that was pro-active may not be the right thing; and encouraged, on behalf of her organization, to consider this further, look for clarity, look for certainty, and look for Milpitas' best face to the rest of the valley and the State.

Mike Queenan, Milpitas, Community Advisory Commission (CAC) member, stated the CAC fully supported the staff recommendation for the changes and for pro-active enforcement; as a CAC member, he had gone out and visited with many residents; half the people he had spoken with felt the City already had a pro-active enforcement and were wondering why the City wasn't doing more to take care of the things than just fixing the items that were pictured on the screen; they were waiting for somebody to do exactly what the Ordinance was about rather than continuing with a complaint driven process where neighbor is being pitted against neighbor; felt the pro-enforcement change would enhance the attitudes people have, it would bring people together in the neighborhoods, and would stop putting people in each other's face; commenting on the Sign Task Force, he felt the work done by the Task Force was exemplary, it gave more detail to the signing process and the signing definition than the City ever had; felt there was a true interest in the business community in wanting to have input into the signing process, however, they (the business community) didn't participate fully.

Diane McDonough, Milpitas, stated as President of the Chamber, the Board of Directors favored the Sign Ordinance, also, at the Economic Development on December 13, 2004, they voted in support of the Sign Ordinance as well; there were several businesses in Milpitas that were anxious for the Sign Ordinance to pass so they could proceed as was said earlier (off Dixon Landing and California Circle).

Mayor Esteves inquired if Ms. McDonough also approved of both the amendment and enforcement portion. Ms. McDonough responded yes.

Al Garcia, Vice Chair of the Planning Commission, added his support for approval of the ordinance changes; felt it was a well thought through ordinance; compared to what it was, this was definitely an improvement over the current Sign Ordinance; was clarified significantly; the innovative use of things like a matrix and assembling all materials into one section was extremely helpful; another important part was the education and information program that was a part of the proposed ordinance; on the negative side (the enforcement, the code compliance side), felt the real issue was getting the word out to the members of the community on how to comply so it was not complex; the ordinance changes make compliance simpler, easier, faster; all businesses would be competing on an equal footing because all of them would be following the Sign Ordinance; in his opinion, any changes that would be made by any more staff study or anything else would be marginal at best, and it was time to approve it, put some teeth into it, and get on with it.

Vice Mayor Gomez inquired if the Planning Commission discussed all aspects of the Sign Ordinance, including the pro-active portion. Mr. Garcia felt the Planning Commission had and took a look at the way it matched with the NBO and the successes in making sure there was overall compliance; the one thing that came through loud and clear from staff was that this was really a non-punitive approach to how to do business; the real emphasis was sending out letters and to make sure the people know what the rules are.

MOTION to close the public hearing.

M/S: Livengood, Giordano.

Ayes: 4

Absent: 1 (Polanski)

Councilmember Livengood said there were things in the Ordinance that he could absolutely not support and other things he thought were fine but from his perspective, it was difficult for him to adopt what was in front of him; and unlike most of the speakers tonight, he did not support the pro-active sign enforcement. Councilmember Livengood commented that some of the small retail businesses were still in the grips of what had been a very difficult recession for them and as somebody who had a small business for many years, he felt now was not the time to be enacting more bureaucracy on the small business community; wanted to try to recapture them and help them and be a partner to them as they try to generate tax revenue for the City of Milpitas and its residents, not to create more bureaucracy and make it harder for them to do business; felt parts of the ordinance did that while other parts were fine; however, he could not vote to support the Ordinance as it was before the Council but would be willing to look at the issue again and look at ways of paring it down so it did not become business unfriendly and would meet the ultimate goal, which was to encourage Economic Development in the City while at the same time protecting the esthetics of the City.

Councilmember Giordano said her concern was based on process and concern whether there were enough members of the Task Force present that represented the business community that had input into the process.

Mayor Esteves said he appreciated the staff and Commissioners' work on the amendments as well as the contributions from the different committees; it was a lot better than what it was and he felt the urgency to help businesses right now with their signs; the current Sign Ordinance was so restrictive it did not provide off site signs to promote a business; the businesses wanted stability and exposure right now; postponement meant that the old ordinance would be followed, which was not very supportive to the City's businesses; if businesses were to be helped, it has to be done right now; and, most if not all of the amendments pertained to helping businesses get more exposure. Mayor Esteves further stated his tendency was to support the amendments; however, on the enforcement – maybe the pro-active approach could be deferred because of the current workload, and once some workload control was maintained, frequency could be looked at; he felt it was a good idea for staff to have at least a chance to drive around the City and look at public safety/public health issues; the only concern he had was the registration of temporary signs as he did not see it as being that critical, and suggested that the start and end dates be placed on the temporary signs. Mayor Esteves said his position was to approve the amendments, defer the pro-active approach, and not include the registration of temporary signs.

*MOTION to have staff bring the item back in 90 days, eliminating the pro-active enforcement portion of the Ordinance and working with all the stakeholders on doing something that has a little more consensus to it.*

M/S: Gomez, Giordano.

Ayes: 3

Noes: 1 (Esteves)

Absent: 1 (Polanski)

#### **JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**

**RA1.  
CALL TO ORDER**

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 8:38 p.m.

**RA2.  
ROLL CALL**

Present were Mayor Esteves, Vice Mayor Gomez, and Agency/Councilmembers Livengood and Giordano. Agency/Councilmember Polanski was absent.

**RA3.  
MINUTES**

*MOTION to approve the Redevelopment Agency minutes of December 7, 2004, including joint meeting with the City Council, as submitted.*

M/S: Livengood, Gomez.

Ayes: 3

Absent: 2 (Giordano, Polanski)

**RA4.  
AGENDA**

*MOTION to approve the agenda and Consent Calendar as amended by the removal of item RA7 from the Consent Calendar.*

M/S: Livengood, Gomez.

Ayes: 3

Absent: 2 (Giordano, Polanski)

(Agency/Councilmember Giordano was out of her seat when the votes were taken.)

**\*RA6.  
RETENTION INCENTIVES**

Directed staff to enter discussions with Intersil Corporation regarding retention incentives that may be available (to consolidate their facilities in Milpitas).

**RA5.  
LIBRARY PROJECT  
CONCEPTUAL DESIGN**

Principal Engineer Mark Rogge reported the schedule, budget, and conceptual design of the Library project were before the Council and proceeded with a PowerPoint presentation reviewing the schedule, the cost plan, and the conceptual design model for the proposed new library. Mr. Rogge further reported the design had been reviewed with County library staff, City staff, several times with the Library Subcommittee, the Library Commission, the Parks, Recreation, and Cultural Resources Commission, the Youth Commission, with progress reports back to the Council; the next step was for the Council to consider approval of the Concept Plan.

Councilmember Livengood commented that he was very pleased with the revision that was made on the north end because it did create what he liked about the recessed element to give prominence to the old building (the historical building); he thought this was a great stepping stone and a very good design to build on from here.

**MOTION** to approve the conceptual design as recommended by the Library Subcommittee.

M/S: Gomez, Livengood.

Ayes: 4

Absent: 1 (Polanski)

**RA7.  
AMEND OWNER  
PARTICIPATION  
AGREEMENT  
APTON PROPERTIES**

Acting Planning & Neighborhood Services Director Tambri Heyden reported with the change from rental units to for sale condominiums, there needed to be a revision to the Owner Participation Agreement; in addition, the Council had received a letter from Mr. Valani, Apton Properties, requesting to use the \$378,000 construction loan for down payment assistance for the 19 affordable condominium units, specifically for the nine very low income units (\$42,000 in down payment assistance each).

**MOTION** to approve the amended Memorandum of Understanding and Owner Participation Agreement with Apton Properties to authorize substitution of apartment units for condominium units and to change the \$378,000 construction loan to down payment assistance for the nine very low income units, subject to approval as to form by the City Attorney.

M/S: Livengood, Giordano.

Ayes: 4

Absent: 1 (Polanski)

**RA8.  
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 9:00 p.m.

The City Council meeting continued.

**REPORTS OF OFFICERS AND BOARDS**

**3.  
Invocations at Council Meetings**

Mayor Esteves said he placed this item on the agenda and proceeded to read excerpts from a memo to the Council from the City Attorney advising the Council on the legality of invocations as part of a City Council meeting. City Attorney Mattas clarified that the memo was distributed as a confidential memorandum with privilege attached and if it was the desire of the Council to make it public, the privilege should be waived by a majority of the Council.

**MOTION** to waive privilege of the confidential memo from the City Attorney.

M/S: Gomez, Livengood.

Ayes: 4

Absent: 1 (Polanski)

Mayor Esteves continued reading from the memo concerning the legality of invocations and advising that it was permissible at meetings of the City Council so long as it satisfied the Constitutional requirement that it not be used to advance one faith or belief over another;

persons invited to give an invocation should be clearly informed that the invocation should be short, non-denominational, and should not be used to advance or discourage any particular religious viewpoint. Mayor Esteves said his ultimate desire was to propose that Council meetings have a short, non-denominational invocation prior to the start of the Council meeting; the invocation must satisfy Constitutional requirements that it not be used to advance any belief; and with this as a goal, he would like to do some more preparation to make a good decision. Mayor Esteves said his motion tonight would be to direct staff to come back with the following: a comprehensive list of persons that could potentially be participants of this invocation; develop some rules on how to sequence them; get some feedback from participants or the public; develop some clear cut rules regarding invocations so that we are within legal and Constitutional requirements, and maybe a boilerplate might be necessary, and any other specifics for implementation; and with that information on hand, hopefully, the Council would be able to decide.

Councilmember Giordano, referring to when this was first brought up in May, asked what had the Mayor done since that time. Mayor Esteves responded he had done nothing since May as he did not want it to become a political issue and decided to bring it back after the election. Councilmember Giordano asked if the Mayor's request was to move this forward tonight or to study it further? Mayor Esteves said he wanted to ask staff to prepare the information he had enumerated and to come back to the Council for a decision.

Vice Mayor Gomez said he spoke in favor of this back in May, he saw the value in having more community input, however, he had problems with having staff take the lead on this; he thought it would be more appropriate to defer it to the Community Advisory Commission; and inquired about the process of adding it to the CAC's Work Plan. City Attorney Mattas responded the Council could direct an amendment to the CAC's Work Plan (that had been previously approved on the agenda) or the Council could simply direct the matter to the CAC and request it review the matter with whatever information the Council deemed appropriate for the CAC to consider and to report back to the Council. Vice Mayor Gomez said he would be more comfortable having the CAC look at this and making it one of their long-term goals. Mayor Esteves said he didn't have a problem with that as long as there was somebody to bring back this information.

MOTION to direct this matter to the Community Advisory Commission as one of their short-term goals, that the CAC do the leg work on this issue and report back to the Council.

MS: Gomez, Giordano.

City Attorney Mattas asked for clarification if the Council, as part of this referral, wanted staff, when the CAC hears this the first time, to receive some of the information the Mayor previously identified or did the Council desire that to come from the CAC and staff respond to that. Mayor Esteves repeated the list of information he had requested.

City Attorney Mattas said he did work with another city that had an invocation and that city simply provided parameters to representatives of the clergy and the clergy created their own invocations within the confines of those parameters.

Assistant City Manager Blair King stated that if the motion passed, the intent was that the CAC would take on the bulk of the workload, and he felt staff could do an upstage setting to make a productive exercise for them with a minimal amount of effort on staff's part.

Councilmember Giordano commented that typically we would look at what other cities do anyway through the course of the process of evaluating it.

Vice Mayor Gomez said he was willing to include the Mayor's information request as part of the motion but wanted to stress feedback from the community.

VOTE ON MOTION:

Ayes: 4

Absent: 1 (Polanski)

4.

Mayor Esteves said he placed this item on the agenda because the two-minute time limit for

## Speaking Time Limit

speakers during Citizens Forum had been in effect for two years and he thought whether it should be changed should be reviewed. The Mayor said his inclination for the orderliness of conducting business might be to try a three-minute limit as he believed a lot of information could be passed on to the Council in three minutes.

Vice Mayor Gomez said he would be bringing forward an open government initiative at the first meeting in January, he didn't want to piecemeal open government when it could all be done at once and would prefer waiting until the first meeting in January.

MOTION to maintain the current two-minute speaking time limit for Citizens Forum and continue consideration to the January 4, 2005, Council meeting with the Open Government Ordinance.

M/S: Livengood, Giordano.

Richard Ruth, Milpitas, asked for clarification that this would be considered with open government and a subcommittee would be developing what a proper time might be. Vice Mayor Gomez clarified he would be bringing forward an open government proposal at the first meeting in January and this would be one of the elements. Mr. Ruth said there was a time in some meetings here where he had asked to have another speaker yield their time to him to extend his presentation; he was told that wasn't a proper thing to do; he thought it was a common procedure in the federal government, and said he would like a little clarification on that as this moves along.

VOTE ON MOTION:

Ayes: 4

Absent: 1 (Polanski)

## 5. Food Pantry Assistance

Mayor Esteves said he would like to bifurcate this item and start with the Milpitas Food Pantry. The Mayor reported that the lease for the Food Pantry would expire in a couple of years or less due to development that may occur in the area; the Food Pantry had expressed its desire to request help from the City with respect to the difficulty of securing a space and/or financial assistance; and he thought the City should provide services in this area as the Food Pantry had been one of the leading groups that serves the poor residents in the area and suggested staff be directed to review and work with the Food Pantry and report back to the Council.

Councilmember Livengood commented that one of the trends he had noticed in other communities was non-profit agencies teaming up and helping each other out with space requirements and dual use of facilities. Councilmember Livengood asked that this be part of the direction – to look at other non-profits in the City that may have space or times when their building was not in use that may be able to help with this.

Councilmember Giordano inquired if this would create a new budgetary expense. Mayor Esteves responded it potentially may.

Vice Mayor Gomez inquired how other cities were dealing with this and what policies they have in place to deal with requests for funding from non-profits and requested staff include that information in its report.

Assistant City Manager King commented that the Council did provide temporary assistance to the Second Harvest Brown Bag Distribution Program and as the request from the Food Pantry was looked at, suggested that a longer term solution for the Second Harvest Program be looked at as well.

Councilmember Giordano asked for clarification that the study was specific to the Milpitas Food Pantry or in general non-profits that would request additional assistance. Assistant City Manager King said as he understood the request, the Council would like staff to look at what options might exist to provide assistance for the Milpitas Food Pantry for its operation when its lease expires; what was also offered with that was that staff would probably also want to bring to the Council a related issue, the Second Harvest Brown Bag Distribution Program, that also had a problem in identifying space for its operation as well.

Vice Mayor Gomez said he wanted to make sure that discussion regarding policy was also included.

MOTION to direct staff to return to the Council with a report on alternatives, fiscal impact, and resources for providing assistance to the Milpitas Food Pantry and the Second Harvest Brown Bag Distribution Program, including a report on how other cities deal with non-profits and what policies they have in place to deal with requests for funding from non-profits.

M/S: Esteves, Gomez.

Ayes: 4

Absent: 1 (Polanski)

#### **Chamber of Commerce Assistance**

Councilmember Giordano excused herself and left the dais. City Attorney Mattas explained that Councilmember Giordano had requested the Attorney's Office look into the issue of whether or not she would have a potential conflict of interest; as a caution, the Attorney suggested she step down tonight and if this comes back to the Council, he would have an opinion by then.

Vice Mayor Gomez commented that he thought all members of the Council were members of the Chamber. City Attorney Mattas said if all members of the Council were members of the Chamber and there was a potential conflict of issue, the rule of necessity would apply and suggested the Council may want to table the matter until January 4, 2005, and the City Attorney could advise the entire Council.

Councilmember Livengood stated for clarification that he was a member but the City pays his dues. City Attorney Mattas noted that Councilmember Giordano has historically paid her own dues.

MOTION to continue consideration of assistance for the Chamber of Commerce to January 4, 2005, meeting pending clarification from the City Attorney on potential conflict of interest issues pertaining to Councilmembers being members of the Chamber.

M/S: Gomez, Livengood.

Ayes: 4

Absent: 1 (Polanski)

#### **6. REACH Program**

Mayor Esteves said this was another program he heard the City had that ended in 2000 and was a program that provided social and recreational based activities and opportunities for disabled youth, teens, and young adults in the community. The Mayor said he was not asking the Council to decide tonight but to ask staff to review and report back on potential residents who might benefit from the program, potential costs or fiscal impact, staffing requirements or any other obligations, and provide a basis for comparing this program to other programs.

Vice Mayor Gomez said he had no problem if staff wanted to look at the issue again but there was some reason why this program was cancelled, and he would want to find out why it was cancelled, was it a participant issue, how many people were using it in the past, what was the usage, and what was the cost. Vice Mayor Gomez further stated he would like to see staff recommend whether or not this was based on cost benefit and whether this was something worth exploring.

MOTION to direct staff to report back on the possibility of re-establishing the REACH Program, including potential fiscal impact, residents that would benefit, staff requirements, and prior experience with the program.

M/S: Gomez, Giordano.

Ayes: 4

Absent: 1 (Polanski)

#### **UNFINISHED BUSINESS**

#### **8. Planning Commission Appointments**

City Clerk Gail Blalock reported this item was for the Council to determine the next step in process for Planning Commission appointments; there were a total of three open positions on the Commission (two vacancies and one term expiration in December); eight applications

were included in the Council's packets and one application was submitted after the agenda was printed; and options for the Council included *determining the applicants to be interviewed* and setting a date for interviews.

Councilmember Livengood commented that he was glad to see that since the election, six or seven new applications had been received. Councilmember Livengood said he did call a couple of people who were in the process before and one of the comments he received was that they felt a little intimidated by the process the Council normally uses (the rankings) and there was a feeling that it was a bit demeaning; and suggested that it be made clear that a different process would be used and a Council majority vote be used instead.

Mayor Esteves said he was not really comfortable with that and suggested asking staff to come back with a more fair selection process.

Councilmember Giordano said she was really pleased to hear Councilmember Livengood's comments on this; having gone through this process twice, she would welcome eliminating the ranking process.

Kathryn Manento, Milpitas, suggested asking people who have served on the Planning Commission how they feel about the ranking; suggested that people who may watch the meeting on television might really feel that on the City Council there may be a couple of people who have meetings before they come and sit before the cameras; things aren't broke, yet people attempt to fix it; thought it makes people a little skeptical to come forward to volunteer; and she thought the Mayor has done a wonderful job.

MOTION to interview all nine applicants at a meeting in January 2005, to do away with the ranking process, and the Council will pick the Commissioners by motion.

M/S: Livengood, Giordano.

Mayor Esteves said he opposed the motion because he wanted to avoid candidates calling Councilmembers to get three votes and would like to have something that was neutral, fair, and professional instead of more political and more one-sided.

VOTE ON MOTION:                      Ayes: 3              Noes: 1 (Esteves)              Absent: 1 (Polanski)

Mayor Esteves suggested holding the interviews on Tuesday, January 11, 2005.

MOTION to conduct Planning Commission interviews on Tuesday, January 11, 2005, beginning at 6:00 p.m. in the Council Chambers.

M/S: Esteves, Gomez.    Ayes: 4                      Absent: 1 (Polanski)

#### ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 9:38 p.m.

Gail Blalock  
City Clerk

**JANUARY 4, 2005**  
**UNAPPROVED MINUTES**



UNAPPROVED MINUTES  
CITY OF MILPITAS

Minutes: Regular Meeting of Milpitas City Council (Including Joint Meeting  
with Redevelopment Agency)  
Date of Meeting: January 4, 2005  
Time of Meeting: 6:00 p.m. (Closed Session)  
7:00 p.m. (Regular Session)  
Place of Meeting: City Hall Council Chambers, 455 E. Calaveras Blvd.

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**ROLL CALL**

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Gomez, and Councilmembers Giordano, Livengood, and Polanski.

**CLOSED SESSION**

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following items listed on the agenda.

1. **Conference with Labor Negotiators**  
(Pursuant to Government Code Section 54957.6)  
Agency Designated Representatives: Steve Mattas and Cherie Rosenquist  
Employee Organization: Milpitas Employee Association
2. **Conference with Legal Counsel - Existing Litigation**  
(Pursuant to Government Code Section 54956.9(a))  
Name of Case: Palmer v. City of Milpitas WCAB SFO 195446, 0426361, 0467998
3. **Conference with Real Property Negotiators**  
(Pursuant to Government Code Section 54956.8)  
Properties: Calvary Assembly of God - APN Nos. 092-37-044, 045, and 046  
Pak - APN No. 092-37-032  
Agency Negotiators: Mike McNeely and Greg Armendariz  
Negotiating Parties: City of Milpitas, Calvary Assembly of God, and Pak  
Under Negotiation: Terms and conditions for acquisition of property
4. **Public Employee Appointment/Public Employment**  
(Pursuant to Government Code Section 54957)  
Title: City Manager

Mayor Esteves adjourned the meeting to closed session 6:01 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Vice Mayor Gomez and Councilmembers Giordano, Livengood, and Polanski present.

**CLOSED SESSION  
ANNOUNCEMENTS**

There were no closed session announcements.

**PLEDGE**

Members of Troop 92 led the Council and audience in the pledge of allegiance.

**MINUTES**

MOTION to approve the Special City Council minutes of December 14, 2004, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Gomez, Giordano

Ayes: 4

Abstain: 1 (Polanski)

**SCHEDULE**

Acting City Manager Lawson reported the City/School District meeting scheduled for January 20, 2005, had been cancelled. Councilmember Polanski announced the 50<sup>th</sup> Anniversary Committee would be holding a meeting Thursday, January 6, 2005, at 7:00 p.m. when they will be reviewing the Time Capsule ceremony planned for January 26, 2005.

MOTION to approve the Schedule of Meetings as amended.

M/S: Gomez, Polanski.

Ayes: 5

## **PRESENTATIONS**

Mayor Esteves presented a Certificate of Appointment to Kathryn Manento, who was recently appointed Alternate No. 2 on the Senior Advisory Commission. Ms. Manento thanked Mayor Esteves and the Council for appointing her to the Senior Advisory Commission, thanked staff for bringing her up to speed in the knowledge of the work to be done, and introduced family and friends present in the audience.

Mayor Esteves read a proclamation proclaiming January 2005 as "Volunteer Blood Donor Month" and presented it to Cynthia Carlson from the Red Cross. Ms. Carlson thanked the Council for acknowledging the Red Cross and thanked the City for sponsoring three to four blood drives each year.

## **CITIZENS FORUM**

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks be limited to two minutes or less.

Mr. Patel, a volunteer from the local Hindu Temple, said a colleague of his would be making a presentation on their efforts to address the Tsunami tragedy. A volunteer of BAPS Care International in Milpitas, a non-religious organization, presented information about the relief activities being conducted for the Tsunami victims, and appealed to people all over the world to help in this time of crisis and human need (i.e., donate on line at [www.bapsicare.org](http://www.bapsicare.org) or mail checks to 25 Corning Avenue, Milpitas, CA 95035).

## **ANNOUNCEMENTS**

Assistant City Manager Blair King introduced the City's new Chief Building Official Kevyan Irannejad. Mr. Irannejad outlined his vision for the Building Department and stated he was grateful for the opportunities provided him in this new position.

Councilmember Polanski expressed her appreciation to the BAPS Care International Tsunami Relief Fund organization for coming forth with information about the Tsunami relief efforts and stated she would like to adjourn the meeting in honor of all those trying to help the Tsunami victims and those who had passed. Councilmember Polanski further stated that Linda Rabe had been ill and was in ICU, and hoped everyone's thoughts and prayers would go to her; and thanked the Community for the condolences and comfort she received during the recent loss of her father. Councilmember Polanski said since she was unable to make the December 21, 2004, Council meeting, she had requested of the City Attorney's office ask her colleagues to delay the evaluation of the former City Manager Tom Wilson until this evening; unfortunately, that did not happen; so she wanted to say she would not have voted to accept his resignation; she enjoyed working with Mr. Wilson and felt his direction, leadership, and vision for Milpitas during his tenure was outstanding, and she believed Milpitas was where it was because of Mr. Wilson's vision, and commended Mr. Wilson for all he did for the City of Milpitas. Councilmember Polanski congratulated Assistant City Manager Blair King on his appointment as Lodi's new City Manager, commenting that Lodi was very fortunate to have him and his family.

Councilmember Giordano, referring to item 8, said she did not want to pull it off consent, but was concerned about the due date of December 30, 2004, and inquired if it was something that needed to be pulled off for discussion. Councilmember Giordano also asked that before adjourning to the 11<sup>th</sup> for Planning Commission interviews, she wanted to know what the format would be for the interviews and how it would be handled. Mayor Esteves said his understanding was the Planning Commission interviews would be Tuesday, January 11, 2005, at 6:00 p.m. in the Council Chambers; it had been agreed upon that after the interviews, each Councilmember would say yes or no to a candidate, and the candidate with the most yes votes would be selected. Councilmember Giordano inquired if the Councilmembers would be given questions to ask. Mayor Esteves stated he assumed that each member of the Council would have the freedom to ask their own questions.

Councilmember Livengood said he disagreed because that was not the direction the Council gave at the last meeting; the direction was not that Councilmembers would say yes or no to individual candidates, in fact, it was just the opposite of that; he wanted to get away from the ranking process, and the motion that was approved by the Council said that there would be a motion made and that a majority of the Council would dictate the three seats, so it was not a ranking or a "yes/no" because that was what he wanted to get away from.

Mayor Esteves reiterated that the Council would vote for each candidate and the candidate with the majority votes would be selected.

Councilmember Giordano, referring to Councilmember Polanski's point regarding being unable to attend Closed Session or a meeting, inquired if it was possible to be a part of the body at a distance either by phone or telecommunications. City Attorney Steve Mattas explained that the Brown Act allowed for Councilmembers (less than a majority of the Council) to participate via teleconference or videoconference if those capabilities exist; it required that the agenda issued for the meeting list the remote location, the location be available to the public, and that it be noticed along with the standard notice that goes out for any agenda; that all has to be known in advance and reflected on the agenda; if that was all done, then a Councilmember who was out of the area could participate in a Council meeting.

Councilmember Giordano said she had been approached by members of the community to possibly look at designating some public entity in memory of Barbara Lee, and she would like to see this placed on the next agenda.

Mayor Esteves, referring to memorializing people, wanted to include on the agenda a discussion of what can be done to memorialize Neil MacKenzie; said he had additional information regarding helping those affected by the Tsunami disaster that he would pass on to staff for display on Channel 15; had received a letter from the Government Finance Officers Association stating the City of Milpitas had received the distinguished Budget Presentation Award for the current fiscal year, the award was the highest form of recognition in Governmental budgeting, and a Certificate of Recognition for Budget Presentation was also presented to the individual or department designated as being primarily responsible for having achieved this award. Mayor Esteves congratulated Finance Director Emma Karlen and thanked the Finance Department and everyone who helped in attaining this achievement, including former City Manager Tom Wilson; and stated at the next Council meeting, a formal presentation of the award would be made.

Mayor Esteves reported that for the second straight year, the City of Milpitas/Redevelopment Agency received an "AA" rating from Standard and Poor's, which was the highest rating provided to a California city.

#### **ANNOUNCEMENT OF CONFLICT OF INTEREST**

City Attorney Mattas inquired if any member of the City Council had a Conflict of Interest to disclose it for the record. There were none.

#### **MOMENTS OF REFLECTION**

Mayor Esteves stated this was to do with the City's Ethics Program and inquired if there were any comments from the Council.

Councilmember Polanski thanked Finance Director Emma Karlen, the City Manager, Assistant City Manager, and others for the team effort provided in attaining the Government Finance Officers Association's Budget Presentation Award.

Mayor Esteves thanked the City Council for its work in 2004.

#### **APPROVAL OF AGENDA**

MOTION to approve the agenda as submitted.

M/S: Gomez, Giordano.

Ayes: 5

## CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. Councilmember Giordano, referring to the December 30, 2004, grant application due date on item 8, inquired if the deadline had been missed or if the application had been submitted. Assistant City Manager Blair King suggested as there was no one in the audience from the Engineering Division to answer the question, it be removed from the Consent Calendar allowing the answer to be found prior to the end of the meeting.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the removal of item 8, in accordance with the staff recommendations.

M/S: Gomez, Polanski.

Ayes: 5

**\*5.  
Odor Control Comprehensive  
Action Plan**

Noted receipt and filed progress report

**\*6.  
Commissioners Recognition**

1. Approved a sit-down dinner at the Embassy Suites, Milpitas on April 20, 2005, to coincide with the nationally recognized Month of the Volunteer.
2. Approved donating the budgeted \$1,500.00 to the Recreation Assistant Program (RAP).
3. Approved usage of monies already appropriated in the 50<sup>th</sup> Anniversary budget for this year's Recognition Event.

**\*7.  
Relay for Life**

Approved Milpitas Relay for Life request for fee waiver and in-kind donation of equipment, supplies, and staffing totaling \$ 3,584.00 for the June 24-25, 2005, Relay for Life event at the Milpitas Sports Center.

**\*10.  
Allied-Barton Security  
Services, Inc.**

Approved Amendment No. 1 to the Allied-Barton Security Services, Inc. (formerly Allied Security, Inc.), contract for an amount not to exceed \$36,182.39, subject to approval as to form by the City Attorney.

**\*11.  
Diversified Maintenance  
Services, Inc.**

Authorized the City Manager to execute Amendment No.1 to the current DMS contract to extend the contract amount by \$5,791.41 for September 2004 janitorial services, subject to approval as to form by the City Attorney.

**\*12.  
Library Off-Site Utility  
Improvements  
(Project No. 8153)**

1. Approved plan and specifications for Phase 1 of the Library Off-Site Utility Improvements (Project No. 8153).
2. Authorized advertising for bid proposals for construction.

**\*13.  
Main Sewage Pump Station  
Demolition (Project No. 6079)**

Approved the contract change order in the amount not to exceed \$93,576.53 to CONCO for demolition of the digester structure, including the testing, and disposal of water and sludge remaining digester tank structure Inc. for the Main Sewage Pump Station Demolition (Project No. 6079), subject to approval as to form by the City Attorney.

**\*14.  
RBF Consulting  
(Project No. 8149)**

Authorized the City Manager to execute the amendment agreement with RBF Consulting for updated environmental and traffic studies for the Milpitas Sports Center project (Project No. 8149), based on the Council approved circulation improvement concept, in the amount of \$26,900.00, subject to approval as to form by the City Attorney.

## PUBLIC HEARINGS

**1.  
Weed Abatement**

Fire Marshal Patti Joki reported at its meeting of December 7, 2004, the Council adopted Resolution No. 7488 declaring weeds on certain properties to be a public nuisance and setting a public hearing for January 4, 2005; notice of the public hearing was published and the County mailed to property owners a notice of the proposed abatement; the purpose of the public hearing was for property owners who object to the removal of the weeds to state their objections before the weeds are removed and the costs made a lien upon the property; and a list of properties to be abated was included in the Council's agenda packet along with a

resolution directing the County Fire Marshal to abate the weeds. Ms. Joki introduced members of the County Agricultural Commissioner's Department Greg Van Wassenhove and Ray Moreno, who were present in the audience.

Mayor Esteves inquired from the time the resolution is adopted, how many days did the property owners have to respond. Agricultural Commissioner Greg Van Wassenhove responded that by adopting the resolution, the property owners were requested to abate weeds by March 1, 2005; then the properties are inspected during fire season to see that they are abated; and if the weeds are not abated, there is a 15 day courtesy notice that the County will mail the property owner for the first time this year.

Councilmember Polanski commented it appeared that many addresses were on the list every year and inquired if there was a record kept, was it a continuing problem, or was there some kind of reminder. Ms. Joki responded the program was beneficial to the City, the County, as well as property owners since these sites had the potential to be a hazard abatement issue; if the County does the abatement, it allows the County to recoup the costs; and the majority of the sites were vacant lots.

Mayor Esteves opened the public hearing and invited comments. There were none.

MOTION to close the public hearing.

M/S: Gomez, Livengood.

Ayes: 5

MOTION to adopt Resolution No. 7496 ordering the County Fire Marshal to abate the nuisance, keep an account of the cost, and embody such account in a report and assessment list to the City Council in accordance with the Milpitas Municipal Code.

M/S: Gomez, Livengood.

Ayes: 5

#### JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

**RA1.  
CALL TO ORDER**

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 7:40 p.m.

**RA2.  
ROLL CALL**

Present were Mayor Esteves, Vice Mayor Gomez, and Agency/Councilmembers Giordano, Livengood, and Polanski.

**RA3.  
MINUTES**

MOTION to approve the Special Redevelopment Agency minutes of December 14, 2004, including joint meeting with the City Council, as submitted.

M/S: Livengood, Giordano.

Ayes: 4

Abstain: 1 (Polanski)

**RA4.  
AGENDA**

Councilmember Livengood stated the City Attorney had advised him that he should abstain from voting on RA5 as he was not part of any of the negotiations that led to the agreement.

MOTION to approve the agenda and consent calendar as submitted.

M/S: Gomez, Giordano.

Ayes: 4

Abstain: 1 (Livengood)

**\*RA5.  
Assessor's Parcel  
No. 022-08-003**

1. Adopted Resolution No. 7479 Certifying Final EIR, adopting the findings related thereto and the Mitigation and Monitoring Plan, and the Statement of Overriding Considerations all as set forth in Agenda Item No. 9 of the City Council Agenda.
2. Approved Purchase and Sale Agreement between Milpitas Redevelopment Agency and Barton P. and Kathleen A. Simmons Revocable Inter Vivos Trust in the amount of \$1,979,775 for property identified as Assessor's Parcel No. 022-08-003, subject to

approval as to form by the Agency Counsel and authorize Chairperson to sign the Agreement and the Certificate of Acceptance on behalf of the Agency and to authorize the Agency Counsel to prepare and submit escrow instructions consistent with the terms of the agreement.

RA6.  
ADJOURNMENT

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 7:41 p.m.

The City Council meeting continued.

REPORTS OF OFFICERS AND BOARDS

City Council

2.  
Chamber of Commerce  
Office Space

Mayor Esteves said this item was continued from the December 21, 2004, Council meeting to consider the Chamber's need for office space when its lease expires in a year or so. The Mayor requested the Council ask staff to work with the Chamber to come up with alternative proposals and come back to the Council for a final decision or approval.

City Attorney Mattas explained that at the last meeting, it was recommended that the Council receive further information from the City Attorney's office regarding the potential for a conflict of interests for Councilmembers who are also members of the Chamber and/or members of the Chamber's Board of Directors; the City Attorney's office looked at the issue and did not find that any member of the Council had a conflict of interest as it related to the item.

Councilmember Polanski inquired if it would be appropriate to have the Economic Development Commission assist staff and the Chamber.

Councilmember Livengood said he would like to hear from the Chamber as to what it felt the City could do to help and what it thought the City's role might be.

Gaye Morando stated the Chamber did not have a time line at this point for moving; everyone knew the Chamber was going to be moving because Super Safeway was coming into the Town Center; the Chamber had been in the Town Center since 1996 and found it to be the best location; the present location was approximately 1350 square feet, but the Chamber did not feel it could afford a location of the same size; when the Town Center was refurbished with the Super Safeway, she understood it would be having the market rate at that time, and it certainly would not be affordable for a non-profit like the Chamber. Ms. Morando further stated they were not looking for financial help at this time; she envisioned the Chamber being located on Main Street, next to the Historical Society or a museum where the people could see the history of Milpitas, or the library; the last time the Chamber moved, the cost was approximately \$4,000; financial help from the City would be good; however, right now, the Chamber was looking for a location at a reasonable rate and any type of assistance in finding one; she saw the Chamber as a business bureau, a resource center; and would like to partner maybe with another non-profit.

Councilmember Giordano said she would like to know if the Council was directing staff to do something, and she was a little confused as to what the request was. Mayor Esteves said the suggestion was to ask staff and the Economic Development Commission to work with the Chamber of Commerce to come up with solutions that would be acceptable to the Council and providing assistance to the Chamber.

Vice Mayor Gomez said he didn't have a problem with forming a task force consisting of the Economic Development Commission and the Chamber with staff support; it sounded reasonable to him.

MOTION to direct staff to work with the Chamber and the Economic Development Commission to find alternatives or proposals addressing the space requirement of the Chamber of Commerce and come back to the Council for approval.

M/S: Esteves, Polanski.

Vice Mayor Gomez inquired if the motion was for staff to take the lead or for a task force to be formed consisting of the Economic Development Commission and the Chamber with staff support. Mayor Esteves stated he would rather have a task force be formed composed of the three groups and for them to decide among themselves who would lead.

Councilmember Livengood said he would like to see the work product include some options, different ideas so the Council would have a wide variety of things to look at and evaluate; maybe it would be a two-step process with a short term and a long term process to be looked at, but he wanted to see a variety of different things explored.

VOTE ON MOTION:

Ayes: 5

### **3. Open Government Ordinance**

Vice Mayor Gomez said this was an ordinance he would like the City Attorney to work on but prior to giving it to the City Attorney, he wanted to bring it to the Council; he was requesting the Council direct the City Attorney to work on such things as formatting it to fit the City's current Municipal Code, include Councilmember Livengood's suggestion of opening up some senior staff meetings to the public, include the issue brought up by the Mayor regarding City employee salaries, format it so that all current City panels (including the Ethics Panel) are included; and bring it back to the Council for review within 30 days and have the report ready for public review within two weeks.

Mayor Esteves asked if Vice Mayor Gomez wanted the Council's comments tonight or wait until the ordinance comes back in draft form. Vice Mayor Gomez said he thought it would be more appropriate to have the final working copy to discuss, and this was only a request for the City Attorney to do that. Vice Mayor Gomez also requested the City Attorney provide a summary, and that summary not be a confidential document, that would provide the public with information on exactly what the ordinance would do.

Mayor Esteves said he also had requested a comparison of the proposed Open Government Ordinance with the City's existing Open Government Ordinance to know what the differences were.

Councilmember Polanski said she hoped that if the Council recommended to pass this onto the City Attorney to be brought back for discussion, the Council would be provided with a copy of the current Ordinance; she would be voting no on the motion as she believed the Open Government Ordinance that took effect in August 2004 could be enhanced and amended with many of the things that had been put in the proposed ordinance; she would have preferred to have the existing ordinance amended and updated; and based upon what she had reviewed, the request was to repeal and replace and because of that, she would be voting no.

Vice Mayor Gomez requested verification that the comparison the Mayor requested was a public document. City Attorney Mattas responded it was a public document.

Mayor Esteves said he wanted to keep an open mind; the City currently had a very adequate Open Government Ordinance; he had a few comments but felt the Council should go through the process of reviewing the amendments.

MOTION to direct the City Attorney to take this Open Government Ordinance, format it to fit into the City's Municipal Code, include Councilmember Livengood's suggestion regarding senior staff meetings being open to the public, include the current Ordinance regarding City employee salaries within this ordinance, ensure that this Ordinance applies to the Ethics Panel, revise the Open Government Commission so that it deals with all good Government issues as

one of its duties, and also provide a summary which will be a public document, bringing it back on a Council agenda within 30 days and having the report ready within two weeks.

M/S: Gomez, Livengood.

City Attorney Mattas requested clarification of having it ready within two weeks and inquired how the Council wanted to receive the report. Vice Mayor Gomez stated his preference was that the Council receive it and it also be made available publicly.

VOTE ON MOTION:

Ayes: 4

Noes: 1 (Polanski)

**4.  
Council/Commission  
Appointments**

Vice Mayor Gomez reported at the Council's December 7, 2004, meeting, the Council provided direction that he and Councilmember Livengood serve on a subcommittee which would make recommendations regarding City Commission liaison appointments, City Commission appointments, and Committee assignments; and the subcommittee's recommendations were in the Council's agenda packet.

Mayor Esteves said he just received the list today and was not able to attend work hour meetings between 8:00 a.m. and 5:00 p.m.; he could be an alternate; referring to the VTA/BART Policy Advisory Board, which meets at 3:00 p.m. in Milpitas, and the Silicon Corridor PAB at 3:00 p.m., requested one of his colleagues volunteer in those two spots. Councilmember Livengood volunteered for both. Mayor Esteves said the VTA Board of Directors had a scheduled meeting on January 6, 2005, at 5:30 p.m. Councilmember Livengood said he had that meeting on his calendar and would be attending the meeting.

Councilmember Polanski said she had sent information to the Mayor prior to the first meeting in December regarding her work hour unavailability; she had not been contacted regarding having any conflicts or issues; referring to the Transportation page, said she had advised the Mayor that because of a change in her work hours and work assignments, she would not be able to attend any meetings between 8:00 a.m. and 5:00 p.m.; she would not be able to attend the 4:00 p.m. Transportation Policy Advisory Committee meeting; also, she would not be able to be the alternate to the BART Policy Advisory Board. With respect to the Terrace Gardens Board of Directors, there would be information forthcoming to the Council in the next couple of months on a proposal (there was a subcommittee working on the information to kind of remove the City from its direct involvement with the Terrace Gardens Board of Directors and one of the proposals would be to discontinue a Council representative and the City Manager or designated staff), and asked the Council if she could continue that until the proposal was brought to the Council.

Vice Mayor Gomez volunteered to take the VTA Policy Advisory Board assignment and the alternate position on the VTA/BART Policy Advisory Board.

Councilmember Polanski said she and Mayor Esteves served on the CIP subcommittee, however, she did not see it listed as one of the subcommittees; this subcommittee meets quarterly or as needed; and she was willing to continue to serve on that subcommittee. Vice Mayor Gomez stated that subcommittee could remain as it was with Mayor Esteves and Councilmember Polanski.

Councilmember Livengood, addressing the City Committees and Subcommittees, inquired of the City Attorney if these were all supposed to be subject to the Brown Act, and as such, required to have agendas and minutes. City Attorney Mattas responded they appeared to all be standing committees that, under the Brown Act, would require the notice requirements.

Councilmember Livengood said he wanted to make sure everything was uniform and commented that he had never read minutes from the City/School Communication Committee or the 50<sup>th</sup> Anniversary Committee and inquired if those were supposed to fall under the Brown Act. City Attorney Mattas responded he believed some of those just identified were not just solely Council Subcommittees; if they were standing Committees with continuing



subject matter jurisdiction, then generally they were required to have agendas; if they were ad hoc committees formed for a short period of time without continuing subject matter jurisdiction, those are not required under the Brown Act to be noticed as meetings.

Councilmember Livengood inquired if the City/School Communication Committee was required to have agendas, minutes, and noticing. Councilmember Polanski said this Committee did have agendas, the meetings were held every other month and was alternately hosted by the City and School District; the host put out the agenda; and were open to the public.

Councilmember Livengood, addressing the City Attorney, inquired if all the Subcommittees were required to provide minutes for the public or for the Council. City Attorney Mattas said the Council could direct that if that was the way it wished to proceed; if the meetings were agendaized, they would not be required to have minutes. Councilmember Livengood clarified that he wished to see consistency, whether it be having agendas and/or minutes or not having agendas and/or minutes.

Vice Mayor Gomez inquired of the City Attorney if the standing committees were in compliance with the Brown Act if minutes were not taken and published and/or noticed. City Attorney Mattas said he would like to take a look at the issue and report back to the Council.

Councilmember Giordano, addressing Councilmember Polanski's concern over Terrace Gardens since it was her appointment, said she didn't know if she wanted to defer it to the Subcommittee that assigned the members to the various committees; if it was going to be disbanded and there would not be a representative from the Council, she did not have a problem; however, she was concerned when it was going to take place or if it really was going to take place and said she would like to get some direction.

Councilmember Livengood commented that as he did not know anything about the issues Councilmember Polanski brought up about the City extracting itself from Terrace Gardens completely, he would need to get some type of report from staff about why the City would do that and the ramifications of that; the taxpayers put millions of dollars into that facility; he recognized that it stood alone financially, however, it was built with taxpayers money and, therefore, he tended to believe the taxpayers should still have some connection to it; his take would be to leave things as they were now in that regard until the Council heard from the City Attorney what the ramifications were, who has control, and can they say they no longer want City involvement.

Councilmember Polanski clarified there was going to be a complete proposal brought to the Council; it would need to be reviewed by the City Attorney for the Council; the Attorney for the Terrace Gardens Board was reviewing it; a Subcommittee had been working on proposals for Terrace Gardens for several months and they planned to bring that forward at the January Board meeting; and her request was to allow her to stay on until the proposal was brought forward; if it were rejected by the Council, she did not have a problem stepping away.

Councilmember Polanski, referring to the Santa Clara County Emergency Preparedness Council, pointed out there was no date or time it met and looking at the calendar, it looked like they met the first Thursday at 12:00 noon; therefore, she would not be able to represent the City at the Santa Clara County Emergency Preparedness Council. Mayor Esteves said he would try to take that meeting.

Councilmember Giordano said she was still very unclear about Terrace Gardens. Mayor Esteves said his understanding was that it would be left the way it currently was.

Councilmember Livengood said this appeared to be an imminent decision; the Council would get a report back from staff right away on what the ramifications of this were; and, at least for January, Councilmember Polanski would go to that meeting and represent the City; then the Council would have a report back that would give it an idea about the future and at that point,

if the City was no longer involved, no one would need to be assigned; if the City was still involved, Councilmember Giordano would assume the assigned role.

Vice Mayor Gomez, addressing that both his name and Councilmember Giordano's name were listed under the item, clarified he put a call into the City Attorney requesting this item and that the Council Subcommittee be discussed, and, as a separate item, it looked like Councilmember Giordano requested that the handbook issue be discussed; therefore, there were two separate items included under one number.

City Attorney Mattas clarified that he had received two separate requests; a specific request from Councilmember Giordano to make sure the item was on the agenda; and then Vice Mayor Gomez, as a representative of the Subcommittee, and he talked prior to the item being placed on the agenda to make sure it was on the agenda; and it was pointed out to him by Vice Mayor Gomez that the Council had directed that the item come back after the Subcommittee had made its recommendations; therefore, when he prepared the staff report, he identified it as a Council initiated item from Vice Mayor Gomez and Councilmember Giordano; and apologized for any confusion it caused.

MOTION to approve the City Council City assignments as amended.

M/S: Livengood, Giordano.

Mayor Esteves commented that before this new procedure, Councilmembers usually continued with the assignments they had and new people were given the assignments from vacancies; he was hopeful that everyone would be conscious of their assignments and he would also expect a report on attendance.

VOTE ON MOTION:

Ayes: 5

#### City Council Handbook

Councilmember Giordano said she had originally intended to pattern the approval process for the Commissioners or their recommendations based on the Planning Commission process; her understanding from the City Attorney was that it was not the proper way as it was prohibited by State law; her idea was rather than having an ordinance or a resolution passed, which would not be appropriate, to include the City's policy change in the Council Handbook.

City Attorney Mattas said given that the Council had elected to create a Subcommittee to make recommendations that come back to the Council via the Mayor and the Council, he suggested the Council Handbook section be updated related to appointments to Boards, Commissions, and Subcommittees to reflect the process if the Council desired to continue in the same process that was used to arrive at the recommendations this evening; and if the Council wished to do that, it would need to provide direction to staff to revise the Council Handbook to reflect that.

Mayor Esteves suggested that the Handbook be updated to reflect the most current practice. City Attorney Mattas stated that was the proposal currently before the Council; and it would be brought back for Council approval.

Councilmember Polanski said she thought one of the important aspects of the Handbook was for it to be kept current with current practices so any time a member of the public or someone new came to the Council or anyone else, they would have that information; she agreed that if it was going to be the practice of this Council, it should be included in the Handbook.

MOTION to direct staff to modify the City Council Handbook to reflect the role of the City Council appointments by Subcommittee.

M/S: Giordano, Polanski.

**Commission Vacancies  
Outreach**

City Clerk Gail Blalock said she had previously provided the Council with a memo on what staff currently does when there is a commission vacancy and added that vacancies were also posted on Channel 15 in addition to the City's website.

Councilmember Giordano said she had reviewed the December 17, 2004, memo and did not feel her request had been taken very seriously and pointed out where she saw the problems existed: The City's website places the Commission vacancies on 1 of 5 rotating pages; once an individual finds the page, it does not fully explain all vacancies and the work of the Commissions in one place, and it becomes too cumbersome; the website still shows that Planning Commission applications are being accepted; therefore, the website was not being updated as frequently as it should be; the motion was made last meeting for the Council to interview the nine existing applicants and close that down so it should have been made clear on the website; the list of Commissioners and their current terms did not appear to be current; we need to remember, too, that all residents did not have access to the web; we look at the Milpitas Post to reach out to the entire community but she did not feel this would be the outreach that she would want to see (her understanding of where the Post delivers, which was not to all single family residents and not to multi-family homes); after a meeting with the editor and finding out about the distribution of the Post, she did not believe it was going to cover the areas that needed to be covered; as we use existing Commissioners or liaisons to do outreach, as alluded in the memo, felt it just does not involve enough individuals and thought the City's appeal to other residents to come out and serve on Commissions needed to be broadened; she had asked for specific ideas on how to broaden the City's outreach and did not see anything in the memo that added to the current process or any current ideas; she would like staff to look at the request again, look at what other cities/counties do to inform residents of upcoming Commission vacancies, and also the responsibility of the Commission, and would like to see a survey of other jurisdictions as well as new ideas to get residents involved (i.e., to have a posting in the utility bills or maybe a listing of vacancies on the Council agendas). Councilmember Giordano said she felt the process needed to be revisited and staff come back with a broader list of possibilities.

Councilmember Livengood said he agreed with most of what Councilmember Giordano mentioned; he was particularly concerned about the last go around there was only one applicant for the Planning Commission and in the past there had been upwards of 19 or 20 people applying for one seat; it was very disconcerting to him and indicated there was a problem; he agreed with the need to come back with a much more aggressive list of recommendations; he had received information from staff over the years that when they do direct mail to people in Milpitas, they get a much better response than when they advertise in the Milpitas Post; the Post doesn't go to everybody's house and people do not depend on newspapers as much as they used to get their information; suggested the City Newsletter be a source for the information; newspapers in general do not have the readership they had at one time; there was a need for new fresh ideas on how we can get people into our system and get them involved and interested in serving; and suggested staff talk to people that were in the business of direct mail or things that tend to be a little more read by people.

Mayor Esteves said it was always great to be more exhaustive and try to reach everybody, but on the other hand, one facet that must be considered all the time is the cost effectiveness; we could invest so much, but how much is the return; if you're going to consider other alternatives, he wanted to look at the fiscal impact (the cost effectiveness) of that action. Mayor Esteves suggested using newspapers in other languages or regular mail; and he had no problem trying to reach a higher number if there was the measure of cost effectiveness in whatever action was done.

Councilmember Livengood re-emphasized that when you start looking at the community of Milpitas and the way people socialize and gather, a lot of them gather and socialize at community centers; he felt that would be a good place to reach out to people could be done pretty cost effectively.

Kathryn Manento stated cost effectiveness was the key point; felt the utility billing was a great way to reach the community; word by mouth was a dynamic force; those in responsibility had to realize that participation still becomes part of leadership; people are bound to be more motivated by those who lead us; and we have to lead in a way that inspires people to want to follow; have to remember when such responsibility has been given to us, we also must use that with such a delicate glove that others are compelled to follow us; so, it's not racking so much of your brain to wonder why it was only one person who came forward, but racking your brain to wonder what did I do to discourage people because she heard a lot of talk about how disappointing people were in the campaign.

MOTION to redirect staff to come back with a new list of ideas and new suggestions on ways to broaden the City's outreach to the community for Commission vacancies and appointments.

M/S: Giordano, Livengood.

Mayor Esteves asked that everyone please look at the openings, and said the Council encourages you to volunteer to come forward and be part in making the City a different place (a best place in this area).

VOTE ON MOTION:

Ayes: 5

## NEW BUSINESS

### 8. MTC Regional Signal Retiming Program Grant Application

Acting City Manager Lawson stated the application was submitted to meet the deadline; this was a formal resolution of application; if not passed, the application would be withdrawn.

MOTION to approve submittal of a grant application to the Metropolitan Transportation Commission for the 2005 Cycle of Regional Signal Timing Program Grant.

M/S: Gomez, Giordano.

Ayes: 5

## RESOLUTIONS

### 9. North Main Street Development Projects EIR

City Attorney Mattas clarified that Councilmember Livengood would be abstaining from the consideration of the EIR only because one project considered in the EIR was the Senior Housing Project he had previously abstained on. Councilmember Livengood apologized for not announcing his abstention at the beginning of the meeting but he had been unaware and left the dais and the Council Chambers.

Senior Planner Dennis Carrington reported the North Main Street Development Project EIR was an Environmental Impact Report that addressed several projects currently underway by the City on North Main Street consisting of a new 60,000 square foot Community Library, which would incorporate the historic Milpitas Grammar School, 100 senior housing units, a 60,000 square foot Santa Clara County Valley Health Center, two parking garages, and streetscape and circulation improvements. Mr. Carrington noted the EIR was prepared by LSA Associates and introduced Lynette Dias and Amy Paulson of LSA, who were in the audience to answer any questions the Council may have. Mr. Carrington further reported the Draft EIR was circulated for public review from October 18 through December 1, 2004; comments were received from six agencies (VTA, City of San Jose, Department of Toxic Substances Control, PG&E, Santa Clara County, and the Santa Clara Valley Water District); the Parks, Recreation and Cultural Resources Commission recommended that the Council certify the EIR on December 6, 2004; and the final EIR responding to comments was circulated for review on December 22, 2004.

Mr. Carrington reviewed the main conclusions of the EIR that the North Main Street Development Project would have significant and unavoidable impacts to traffic, air quality, and cultural resources and explained the significant unmitigable cultural impact concerning

the relocation on site of the DeVries home and the demolition of the home's contributing outbuildings and plantings.

Mr. Carrington further reviewed the Statement of Overriding Considerations describing the project's overriding public benefit, which was attached to the resolution provided in the Council's agenda packet; a couple of the important findings that would be considered in the Statement of Overriding Findings would be that the project would result in a Library that will be better able to offer educational services to its patrons, will be better able to accommodate expanding collection than the current Library; and that the project would result in the construction of senior housing that would provide housing for very low and extremely low income seniors (a demographic group that was currently underserved by affordable housing).

Mayor Esteves asked Mr. Carrington go back to the slide regarding the adverse cultural impact on the Grammar School because of building additions to it (historical integrity) and commented this was the first time he had heard about this and asked why it was.

Acting Planning Manager James Lindsay responded when the Environmental Impact Report was done, the Library had not reached this stage of design and the Environmental Impact Report was working off of the Master Plan document; the Environmental Impact Report looked at a worse case scenario and that allowed the Council flexibility to choose different design options; as it happened, the Conceptual Design preceded this and its to avoid any type of re-circulation issues; staff decided to go ahead with the more conservative finding; if circumstances were to change and that design proved infeasible for whatever reason, the document allowed the Council to modify it in any way; and this gave the Council the most flexibility by making this finding.

Mayor Esteves said he was glad to hear that because this was earlier than the Conceptual Design of the Library; but on the other hand, asked if the Council could have a confirmation from the designer/architect that we have somehow mitigated this because that was the intent of the Design as well. Mr. Lindsay said the Project Manager, Mark Rogge, was in the audience and noted that this finding was a more conservative view, and he believed there was a report from the architectural firm on the Secretary's findings.

Project Manager Mark Rogge said this was a very conservative look at it; however, the actual design did address the historic structure, and the architect did find that they would be complying with the Secretary of Interior Guidelines; and, therefore, there would be no significant impact as far as that went; the Finding within the Environmental Impact Report was perfectly acceptable, and it did make it very conservative; if there were differing opinions out there as to whether or not it satisfied or not, staff did have a letter from its expert Historical Preservation Consultant indicating they believed that the current Concept Design did not pose any significant impact on the historic building, and there was a concurring statement from the City's prior historical consultant on that.

Mayor Esteves, referring to a proposal on one of the parking garages to build a banquet facility on top (a 600 square feet facility), inquired if that was considered in the EIR. Mr. Lindsay responded it was; the purpose of the Environmental Impact Report was to provide almost an extreme build-out situation and to provide the Council as much flexibility as possible; the parking structure west (as it was now referred to as), which would be the parking structure that would primarily serve the Health Clinic, anticipated trip generation from a community center, a restaurant, banquet facility, as well as additional retail space; so, it did consider a fairly significant building program (one which provides the most flexibility for the Council in its ultimate decision making of what will happen with the structures).

MOTION to adopt Resolution No 7497 certifying the Environmental Impact Report, making CEQA findings, adopting the Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Plan.

M/S: Gomez, Polanski.

Ayes: 4

Abstain: 1 (Livengood)

Assistant City Manager Blair King announced this was his last meeting with the Council and he wanted to mention that for the last 3-1/2 years, it had been his privilege to serve the citizens of Milpitas, he appreciated each and every one on the Council for the respect shown him and for his opportunity to work with the Council, Milpitas had a wonderful community and the City had a wonderful staff, and it had been his pleasure to be employed for the City of Milpitas.

#### ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 9:00 p.m. in memory of the victims of the Tsunami disaster and in honor of those providing aid to the survivors at 9:00 p.m. to 6:00 p.m., January 11, 2005, for Planning Commission interviews

Gail Blalock  
City Clerk